

1 Vanessa R. Waldref  
2 United States Attorney  
3 Eastern District of Washington  
4 Patrick J. Cashman  
5 Assistant United States Attorney  
6 Post Office Box 1494  
7 Spokane, WA 99210-1494  
8 Telephone: (509) 353-2767

FILED IN THE U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

FEB 01 2023

SEAN F. McAVOY, CLERK  
SPOKANE, WASHINGTON

9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

Case No.: 2:22-CR-60-TOR-1

12 Plaintiff,

Plea Agreement

13 v.

14 TYSON J. HORNER,

15 Defendant.

16 Plaintiff United States of America, by and through Vanessa R. Waldref,  
17 United States Attorney the Eastern District of Washington, and Patrick J.  
18 Cashman, Assistant United States Attorney for the Eastern District of Washington,  
19 and Defendant Tyson J. Horner ("Defendant"), both individually and by and  
20 through Defendant's counsel, Deputy Federal Defender John B. McEntire, IV,  
21 agree to the following Plea Agreement.

22 1. Guilty Plea and Maximum Statutory Penalties

23 Defendant agrees to enter a plea of guilty to the sole count of the Indictment  
24 filed on May 17, 2022, which charges Defendant with Possession with Intent to  
25 Distribute 400 Grams of Fentanyl, in violation of 21 U.S.C. § 841(a)(1),  
26 (b)(1)(A)(vi), a Class A felony.

27 Defendant understands that the following potential penalties apply:  
28

- a. a term of imprisonment of not less than 10 years and up to a lifetime;
- b. a term of supervised release of not less than 5 years and up to a lifetime;
- c. a fine of up to \$10,000,000;
- d. a \$100 special penalty assessment; and
- e. denial of certain federal benefits.

2. Supervised Release

Defendant understands that if Defendant violates any condition of Defendant's supervised release, the Court may revoke Defendant's term of supervised release, and require Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, up to the following terms:

- a. 5 years in prison if the offense that resulted in the term of Supervised Release is a class A felony,
- b. 3 years in prison if the offense that resulted in the term of Supervised Release is a class B felony, and/or
- c. 2 years in prison if the offense that resulted in the term of Supervised Release is a class C felony.

Accordingly, Defendant understands that if Defendant commits one or more violations of supervised release, Defendant could serve a total term of incarceration greater than the maximum sentence authorized by statute for Defendant's offense or offenses of conviction.

3. The Court is Not a Party to this Plea Agreement

The Court is not a party to this Plea Agreement and may accept or reject it. Defendant acknowledges that no promises of any type have been made to Defendant with respect to the sentence the Court will impose in this matter.

1 Defendant understands the following:

- 2 a. sentencing is a matter solely within the discretion of the Court;
- 3 b. the Court is under no obligation to accept any recommendations
- 4 made by the United States or Defendant;
- 5 c. the Court will obtain an independent report and sentencing
- 6 recommendation from the United States Probation Office;
- 7 d. the Court may exercise its discretion to impose any sentence it
- 8 deems appropriate, up to the statutory maximum penalties;
- 9 e. the Court is required to consider the applicable range set forth
- 10 in the United States Sentencing Guidelines, but may depart or
- 11 vary upward or downward under certain circumstances; and
- 12 f. the Court may reject recommendations made by the United
- 13 States or Defendant, and that will not be a basis for Defendant
- 14 to withdraw from this Plea Agreement or Defendant's guilty
- 15 plea.

16 4. Denial of Federal Benefits

17 Defendant understands that by entering this plea of guilty, Defendant is no  
18 longer eligible for assistance under any state program funded under part A of Title  
19 IV of the Social Security Act (concerning Temporary Assistance for Needy  
20 Families) or benefits under the food stamp program or any state program carried  
21 out under the Food Stamp Act. 21 U.S.C. § 862a. Defendant also understands that  
22 the Court may deny Defendant's eligibility for any grant, contract, loan,  
23 professional license, or commercial license provided by an agency of the United  
24 States or by appropriated funds of the United States. 21 U.S.C. § 862.

25 5. Potential Immigration Consequences of Guilty Plea

26 If Defendant is not a citizen of the United States, Defendant understands the  
27 following:  
28

- a. pleading guilty in this case may have immigration consequences;
- b. a broad range of federal crimes may result in Defendant's removal from the United States, including the offense to which Defendant is pleading guilty;
- c. removal from the United States and other immigration consequences are the subject of separate proceedings; and
- d. no one, including Defendant's attorney or the Court, can predict with absolute certainty the effect of a federal conviction on Defendant's immigration status.

Defendant affirms that Defendant is knowingly, intelligently, and voluntarily pleading guilty as set forth in this Plea Agreement, regardless of any immigration consequences that Defendant's guilty plea may entail.

6. Waiver of Constitutional Rights

Defendant understands that by entering this guilty plea, Defendant is knowingly and voluntarily waiving certain constitutional rights, including the following:

- a. the right to a jury trial;
- b. the right to see, hear and question the witnesses;
- c. the right to remain silent at trial;
- d. the right to testify at trial; and
- e. the right to compel witnesses to testify.

While Defendant is waiving certain constitutional rights, Defendant understands that Defendant retains the right to be assisted by an attorney through the sentencing proceedings in this case and any direct appeal of Defendant's conviction and sentence, and that an attorney will be appointed at no cost if Defendant cannot afford to hire an attorney.

1 Defendant understands and agrees that any defense motions currently  
2 pending before the Court are mooted by this Plea Agreement, and Defendant  
3 expressly waives Defendant's right to bring any additional pretrial motions.

4 7. Elements of the Offense

5 The United States and Defendant agree that in order to convict Defendant of  
6 Possession with Intent to Distribute 400 Grams of Fentanyl, in violation of 21  
7 U.S.C. § 841(a)(1), (b)(1)(A)(vi), the United States would have to prove the  
8 following beyond a reasonable doubt.

- 9 a. *First*, on or about March 10, 2022, within the Eastern District  
10 of Washington, Defendant knowingly possessed a mixture or  
11 substance containing a detectable amount of fentanyl,  
12 b. *Second*, Defendant possessed the fentanyl with the intent to  
13 distribute it to another person;  
14 c. *Third*, the Defendant possessed with the intent to distribute  
15 more than 400 grams of a mixture or substance containing a  
16 detectable amount of fentanyl.

17 8. Factual Basis and Statement of Facts

18 The United States and Defendant stipulate and agree to the following: the  
19 facts set forth below are accurate; the United States could prove these facts beyond  
20 a reasonable doubt at trial; and these facts constitute an adequate factual basis for  
21 Defendant's guilty plea.

22 The United States and Defendant agree that this statement of facts does not  
23 preclude either party from presenting and arguing, for sentencing purposes,  
24 additional facts that are relevant to the Sentencing Guidelines computation or  
25 sentencing, unless otherwise prohibited in this Plea Agreement.

26 On March 10, 2022, Columbia River Drug Task Force (CRDTF) Detective  
27 Miller and Department of Homeland Security Investigations (HSI) SA Ken West  
28 observed a silver Subaru Forrester, Washington license plate BME 2768 arrive in

1 the supermarket parking lot. Detective Miller visually confirmed the driver and  
2 sole occupant of the Subaru was Defendant. The surveillance units observed  
3 Defendant drive slowly around the parking lot while on his cellular phone. Within  
4 minutes of Defendant's arrival, marked law enforcement units attempted to stop  
5 Defendant's vehicle. Defendant fled the supermarket's parking lot at a high rate of  
6 speed, eventually leading the pursuing vehicles to an address on Malaga Alcoa  
7 Highway, Malaga, Washington. Defendant had crashed the Subaru into a nearby  
8 pole at the address and fled into the residence.

9       Upon the arrival of Detective English at the Malaga Alcoa residence, the  
10 homeowner gave the detectives permission to enter the residence. The detectives  
11 located Defendant in the back bedroom where he was taken into custody. A search  
12 incident to arrest resulted in detectives locating approximately 55 suspected  
13 fentanyl pills contained in a plastic baggy. Upon being advised of his *Miranda*  
14 warnings, Defendant agreed to speak with detectives and indicated that he hid an  
15 additional 5 to 6 "boats" in the back bedroom. A boat is approximately 1,000 pills  
16 of fentanyl.

17       The parties agree and stipulate Defendant possessed 549.3 gross grams of  
18 fentanyl pills, a Schedule II controlled substance; the parties also agree and  
19 stipulate Defendant possessed those pills with the intent to distribute them. Drug  
20 Enforcement Laboratory testing remains pending at this time. However, based  
21 upon laboratory results from other cases, the parties agree the weight of an  
22 individual pill is approximately .1 gram. Therefore, the parties agree and stipulate  
23 the possession of the number of pills involved in this case is in excess of 400  
24 grams of fentanyl.

25       9.     The United States' Agreements

26       The United States Attorney's Office for the Eastern District of Washington  
27 agrees not to bring additional charges against Defendant based on information in  
28 its possession at the time of this Plea Agreement that arise from conduct that is



1 either charged in the Indictment or identified in discovery produced in this case,  
2 unless Defendant breaches this Plea Agreement before sentencing.

3 10. United States Sentencing Guidelines Calculations

4 Defendant understands and acknowledges that the United States Sentencing  
5 Guidelines (“U.S.S.G.” or “Guidelines”) apply and that the Court will determine  
6 Defendant’s advisory range at the time of sentencing, pursuant to the Guidelines.  
7 The United States and Defendant agree to the following Guidelines calculations.

8 a. Base Offense Level and Application of Relevant Conduct

9 The parties agree and stipulate that Defendant possessed with the intent to  
10 distribute at least 400 grams but less than 1.2 kilograms of fentanyl and that this  
11 amount encompasses his relevant conduct. Therefore, the parties agree that  
12 Defendant’s base offense level is 30. U.S.S.G. § 2D1.1(a)(5), (c)(5).

13 b. Special Offense Characteristics

14 The parties agree that Defendant’s base offense level is increased by 2 levels  
15 because Defendant engaged in reckless endangerment during the course of this  
16 offense. U.S.S.G. § 3C1.2

17 The parties further agree Defendant does not receive a 2-level increase for  
18 possession of a dangerous weapon. U.S.S.G. § 2D1.1(b)(1).

19 c. Acceptance of Responsibility

20 The United States will recommend that Defendant receive a downward  
21 adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a), (b), if  
22 Defendant does the following:

- 23 i. accepts this Plea Agreement;
- 24 ii. enters a guilty plea at the first Court hearing that takes
- 25 place after the United States offers this Plea Agreement;
- 26 iii. demonstrates recognition and affirmative acceptance of
- 27 Defendant’s personal responsibility for Defendant’s
- 28 criminal conduct;

- iv. provides complete and accurate information during the sentencing process; and
- v. does not commit any obstructive conduct.

The United States and Defendant agree that at its option and on written notice to Defendant, the United States may elect not to recommend a reduction for acceptance of responsibility if, prior to the imposition of sentence, Defendant is charged with, or convicted of, any criminal offense, or if Defendant tests positive for any controlled substance.

d. No Other Agreements

Defendant understands and acknowledges that the United States is free to make any sentencing arguments it sees fit, including arguments arising from Defendant's uncharged conduct, conduct set forth in charges that will be dismissed pursuant to this Agreement, and Defendant's relevant conduct.

e. Criminal History

The United States and Defendant have no agreement and make no representations about Defendant's criminal history category, which will be determined by the Court after the United States Probation Office prepares and discloses a Presentence Investigative Report.

11. Safety Valve

The parties recognize Defendant may be safety-valve eligible. *See* 18 U.S.C. § 3553(f).

12. Incarceration

The United States agrees to recommend a sentence no higher than the low end of the Guidelines as calculated by the United States or the mandatory minimum, whichever is lower.

Defendant may recommend any legal sentence.



1           13.   Supervised Release

2           The parties each agree to recommend 5 years of supervised release. In  
3 addition to the standard conditions of supervised release imposed in all cases in  
4 this District, the parties ask the Court to impose the following conditions:

- 5           a.     The United States Probation Officer may conduct, upon  
6                 reasonable suspicion, and with or without notice, a search of  
7                 Defendant's person, residences, offices, vehicles, belongings,  
8                 and areas under Defendant's exclusive or joint control.
- 9           b.     Defendant shall participate and complete such drug testing and  
10                drug treatment programs as the Probation Officer directs.
- 11          c.     Defendant shall complete mental health evaluations and  
12                treatment, including taking medications prescribed by the  
13                treatment provider. Defendant shall allow reciprocal release of  
14                information between the Probation Officer and the treatment  
15                provider. Defendant shall contribute to the cost of treatment  
16                according to the Defendant's ability.

17          14.   Criminal Fine

18          The parties recommend no fine be imposed in this matter.

19          15.   Mandatory Special Penalty Assessment

20          Defendant agrees to pay the \$100 mandatory special penalty assessment to  
21 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.  
22 § 3013.

23          16.   Payments While Incarcerated

24          If Defendant lacks the financial resources to pay the monetary obligations  
25 imposed by the Court, Defendant agrees to earn money toward these obligations by  
26 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

1           17.   Additional Violations of Law Can Void Plea Agreement

2           The United States and Defendant agree that the United States may, at its  
3 option and upon written notice to the Defendant, withdraw from this Plea  
4 Agreement or modify its sentencing recommendation if, prior to the imposition of  
5 sentence, Defendant is charged with or convicted of any criminal offense or tests  
6 positive for any unlawful or unprescribed controlled substance.

7           18.   Waiver of Appeal Rights

8           Defendant understands he has a limited right to appeal or challenge  
9 Defendant's conviction and the sentence imposed by the Court. Defendant  
10 expressly waives his right to appeal his conviction, but reserves the right to appeal  
11 his sentence if the following occurs: 1) Defendant receives a sentence higher than  
12 the low end of the Guideline ranger, as calculated by the Court; or 2) the Court  
13 applies a specific offense characteristic or adjustment not contemplated by the  
14 parties.

15          Defendant reserves the right to challenge his term of supervised release or  
16 any special conditions.

17          Defendant expressly waives the right to file any post-conviction motion  
18 attacking Defendant's conviction and sentence, including a motion pursuant to 28  
19 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from  
20 information not now known by Defendant and which, in the exercise of due  
21 diligence, Defendant could not know by the time the Court imposes sentence.

22          Nothing in this Plea Agreement shall preclude the United States from  
23 opposing any post-conviction motion for a reduction of sentence or other attack  
24 upon the conviction or sentence, including, but not limited to, writ of habeas  
25 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

26          19.   Compassionate Release

27          In consideration for the benefits Defendant is receiving under the terms of  
28 this Plea Agreement, Defendant expressly waives Defendant's right to bring any

1 motion for Compassionate Release other than a motion arising from one of the  
2 specific bases set forth in this paragraph of this Plea Agreement. The United States  
3 retains the right to oppose, on any basis, any motion Defendant files for  
4 Compassionate Release.

5 The only bases on which Defendant may file a motion for Compassionate  
6 Release in the Eastern District of Washington are the following:

7 a. Medical Condition of Defendant

- 8 i. Defendant is suffering from a terminal illness (i.e., a  
9 serious and advanced illness with an end of life  
10 trajectory). A specific prognosis of life expectancy (i.e.,  
11 a probability of death within a specific time period) is not  
12 required. Examples include metastatic solid-tumor  
13 cancer, amyotrophic lateral sclerosis (ALS), end-stage  
14 organ disease, and advanced dementia; or  
15 ii. Defendant is suffering from a serious physical or medical  
16 condition, a serious functional or cognitive impairment,  
17 or deteriorating physical or mental health because of the  
18 aging process that substantially diminishes the ability of  
19 the defendant to provide self-care within the environment  
20 of a correctional facility and from which Defendant is not  
21 expected to recover.

22 b. Age of Defendant

- 23 i. Defendant is at least 65 years old, is experiencing a  
24 serious deterioration in physical or mental health because  
25 of the aging process; and has served at least 10 years or  
26 75 percent of Defendant's term of imprisonment,  
27 whichever is less; or  
28

- 1                   ii. Defendant is at least 70 years old and has served at least  
2                   30 years in prison pursuant to a sentence imposed under  
3                   18 U.S.C. § 3559(c) for the offense or offenses for which  
4                   Defendant is imprisoned.

5           c.    Family Circumstances

- 6                   i.    The caregiver of Defendant's minor child or children has  
7                   died or become incapacitated, and Defendant is the only  
8                   available caregiver for Defendant's minor child or  
9                   children; or  
10                  ii.   Defendant's spouse or registered partner has become  
11                  incapacitated, and Defendant is the only available  
12                  caregiver for Defendant's spouse or registered partner.

13          d.    Subsequent Reduction to Mandatory Sentence

- 14                  i.    Defendant pleaded guilty to an offense which, on the date  
15                  of Defendant's guilty plea, carried a mandatory minimum  
16                  sentence; and  
17                  ii.   after the entry of judgment, the length of the mandatory  
18                  minimum sentence for Defendant's offense of conviction  
19                  was reduced by a change in the law; and  
20                  iii.   the application of the reduced mandatory minimum  
21                  sentence would result in Defendant receiving a lower  
22                  overall sentence.

23          e.    Ineffective Assistance of Counsel

- 24                  i.    Defendant seeks Compassionate Release based on a  
25                  claim of ineffective assistance of counsel arising from  
26                  information that Defendant both  
27                  1.    did not know at the time of Defendant's guilty  
28                  plea, and

2. could not have known, in the exercise of due diligence, at the time the Court imposed sentence.

20. Withdrawal or Vacatur of Defendant's Plea

Should Defendant successfully move to withdraw from this Plea Agreement or should Defendant's conviction be set aside, vacated, reversed, or dismissed under any circumstance, then:

- a. this Plea Agreement shall become null and void;
- b. the United States may prosecute Defendant on all available charges;
- c. The United States may reinstate any counts that have been dismissed, have been superseded by the filing of another charging instrument, or were not charged because of this Plea Agreement; and
- d. the United States may file any new charges that would otherwise be barred by this Plea Agreement.

The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

Defendant agrees to waive any objections, motions, and/or defenses Defendant might have to the United States' decisions to seek, reinstate, or reinitiate charges if a count of conviction is withdrawn, set aside, vacated, reversed, or dismissed, including any claim that the United States has violated Double Jeopardy.

Defendant agrees not to raise any objections based on the passage of time, including but not limited to, alleged violations of any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

1           21.   Integration Clause

2           The United States and Defendant acknowledge that this document  
3 constitutes the entire Plea Agreement between the United States and Defendant,  
4 and no other promises, agreements, or conditions exist between the United States  
5 and Defendant concerning the resolution of the case.

6           This Plea Agreement is binding only on the United States Attorney's Office  
7 for the Eastern District of Washington, and cannot bind other federal, state, or local  
8 authorities.

9           The United States and Defendant agree that this Agreement cannot be  
10 modified except in a writing that is signed by the United States and Defendant.

11                           Approvals and Signatures

12           Agreed and submitted on behalf of the United States Attorney's Office for  
13 the Eastern District of Washington.

14 Vanessa R. Waldref  
15 United States Attorney

16   
17 \_\_\_\_\_  
18 Patrick J. Cashman  
19 Assistant United States Attorney

20  
21  
22  
23  
24  
25  
26  
27  
28  
\_\_\_\_\_ 2-1-23  
Date



1 I have read this Plea Agreement and I have carefully reviewed and discussed  
2 every part of this Plea Agreement with my attorney. I understand the terms of this  
3 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and  
4 voluntarily. I have consulted with my attorney about my rights, I understand those  
5 rights, and I am satisfied with the representation of my attorney in this case. No  
6 other promises or inducements have been made to me, other than those contained  
7 in this Plea Agreement. No one has threatened or forced me in any way to enter  
8 into this Plea Agreement. I agree to plead guilty because I am guilty.

9  
10 

11 \_\_\_\_\_  
12 Tyson J. Horner  
Defendant

2/1/23  
\_\_\_\_\_  
Date

13 I have read the Plea Agreement and have discussed the contents of the  
14 agreement with my client. The Plea Agreement accurately and completely sets  
15 forth the entirety of the agreement between the parties. I concur in my client's  
16 decision to plead guilty as set forth in the Plea Agreement. There is no legal  
17 reason why the Court should not accept Defendant's guilty plea.

18  
19 

20 \_\_\_\_\_  
John B. McEntire, IV  
Attorney for Defendant

2/1/23  
\_\_\_\_\_  
Date